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**Attorneys for Defendants Oracle Corporation,  
OC Acquisition LLC, and Rhea Acquisition Corporation**

GALLATIN COUNTY CLERK  
OF DISTRICT COURT  
JENNIFER BRANDON

2011 DEC 23 AM 11 41

FILED  
BY RAL  
DEPUTY

**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT,  
GALLATIN COUNTY**

|   |   |                                      |
|---|---|--------------------------------------|
| TOWN OF DAVIE POLICE OFFICERS<br>RETIREMENT SYSTEM and DIANE<br>WOSEK, Individually and on Behalf of All<br>Others Similarly Situated,  | ) | Cause No. DV-11-1032C                |
|   | ) | Hon. Wm. Nels Swandal                |
|   | ) |                                      |
| Plaintiffs,   | ) |                                      |
|   | ) |                                      |
| vs.   | ) |                                      |
|   | ) | <b><u>DEFENDANTS' JOINT</u></b>      |
|   | ) | <b><u>SUGGESTION OF MOOTNESS</u></b> |
| RIGHTNOW TECHNOLOGIES, INC., GREG<br>R. GIANFORTE, RICHARD E. ALLEN,<br>GREGORY M. AVIS, THOMAS W.<br>KENDRA, WILLIAM J. LANSING, ALLEN<br>E. SNYDER, ORACLE CORPORATION, OC<br>ACQUISITION LLC, and RHEA<br>ACQUISITION CORPORATION, | ) |                                      |
|   | ) |                                      |
| Defendants.   | ) |                                      |

The RightNow Defendants<sup>1</sup> and Oracle Defendants<sup>2</sup> jointly submit this Suggestion of Mootness because the only relief that Plaintiffs seek is injunctive relief, and the event they sought to enjoin has now transpired.

**I. RELEVANT ALLEGATIONS**

Plaintiffs' "action seeks equitable relief only." Am. Compl., ¶ 13; Prayer for Relief. Specifically, Plaintiffs allege that the RightNow Defendants omitted material information from their November 21, 2011 Proxy, *id.* at ¶¶ 74-76, and the Court should therefore prevent the RightNow shareholders from being asked to vote on the proposed transaction. *Id.* at ¶ 79. Plaintiffs further alleged that the shareholder vote was set for December 22, 2011. *Id.*, ¶ 11.

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<sup>1</sup> The RightNow Defendants presently include RightNow Technologies, Inc. and each of its named directors who have been served with the Summons and Amended Complaint ("Am. Compl."): Greg R. Gianforte, Gregory M. Avis, Thomas W. Kendra, William J. Lansing, and Allen Snyder.

<sup>2</sup> The Oracle Defendants include Oracle Corporation, OC Acquisition LLC, and Rhea Acquisition Corporation.

## II. RELEVANT FACTS

On December 22, 2011, the RightNow Defendants conducted the duly noticed shareholder vote on the proposed transaction. **87.2% of all shares entitled to vote were voted.** Declaration of Alan Rassaby [“Rassaby Decl.”], ¶ 2. **99.8% of all voted shares approved the merger;** only 0.2% of voted shares opposed the merger. *Id.*

Plaintiffs never brought a motion to restrain or enjoin the shareholder vote.

## III. ARGUMENT

“Mootness is a threshold issue which must be resolved before addressing the underlying dispute.”<sup>3</sup> *Serena Vista, LLC v. State of Montana Dep’t of Nat’l Resources and Conservation*, 342 Mont. 73, 77; 179 P.3d 510, 513 (2008). An action “is moot when, due to an event or happening, the issue has ceased to exist and no longer presents an actual controversy.” *Shamrock Motors v. Ford Motor Co.*, 293 Mont. 188, 193; 974 P.2d 1150, 1153 (1999). Actions are moot when, as here, they seek to enjoin acts that are already accomplished. *Id.* (citing *Adkins v. City of Livingston*, 121 Mont. 528, 532, 194 P.2d 238, 240 (1948)) ; *see also Faust v. Util. Solutions, LLC*, 2007 MT 326, ¶ 16, 340 Mont 183, 187, 173 P.3d 1183, 1186 (an injunction is “to afford preventive relief only”). The touchstone of mootness is whether the Court “can fashion effective relief.” *Turner v. Mountain Engineering and Construction, Inc.*, 276 Mont. 55, 61; 915 P.2d 799, 803 (1996).

Plaintiffs’ action is moot because the only relief they sought was injunctive relief to prevent the December 22, 2011 shareholder vote from taking place on the basis that the proxy statement soliciting the vote was materially misleading. But December 22, 2011 came and went, the shareholder vote has now taken place, and the Court cannot provide effective relief to enjoin or undo it. Plaintiffs’ action is therefore moot under Montana law. *See Shamrock Motors.*, 293 Mont. at 193; 974 P.2d at 1153 (citing *Adkins*, 121 Mont. at 532, 194 P.2d at 240).

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<sup>3</sup> As a procedural matter, mootness need not be asserted in a dispositive motion. *See, e.g., Serena Vista*, 342 Mont. at 76-77; 179 P.3d at 513-14 (mootness raised in appellate brief).

The result is the same under Delaware law. If shareholders vote on a merger without complete and accurate information, “it is, by definition, too late to remedy the harm.” *In re Transkaryotic Therapies, Inc.*, 954 A.2d 346, 361 (Del. Ch. 2008). “An injunctive order requiring supplemental, corrective disclosures at this stage would be an exercise in futility and frivolity.” *Id.* at 362.

While exceptions to the mootness doctrine exist, none applies here. A party “may not claim an exception to the mootness doctrine where the case has become moot through that party’s own failure to [act].” *Turner*, 276 Mont. at 60; 915 P.2d at 803. *See also Gateway Opencut Mining Action Group v. Board of County Commissioners*, 361 Mont. 398, 405-06; 260 P.3d 133, 138-39 (2011) (action rendered moot, even though opposing party moved to enjoin action, when district court did not rule on motion before such action occurred). Here, even though Plaintiffs knew that the shareholder vote was scheduled for December 22, 2011, Am. Compl. at ¶ 11, they did not file a motion to restrain or enjoin that vote from taking place. By failing to take appropriate action to prevent the shareholder vote, Plaintiffs took themselves out of any exception to the mootness doctrine.

#### **IV. CONCLUSION**

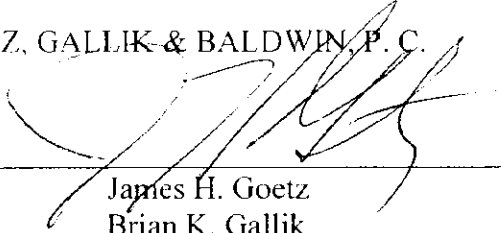
For the foregoing reasons, Defendants believe the Court should dismiss this action as moot.

///

RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of December, 2011.

GOETZ, GALLIK & BALDWIN, P. C.

By: \_\_\_\_\_

  
James H. Goetz  
Brian K. Gallik

and

J David Jackson and F. Matthew Ralph  
DORSEY & WHITNEY LLP

**Attorneys for Defendants RightNow  
Technologies, Inc., Greg R. Gianforte, Richard  
E. Allen, Gregory M. Avis, Thomas W.  
Kendra, William J. Lansing, and Allen E.  
Snyder**

CROWLEY FLECK PLLP

By: \_\_\_\_\_

 for  
Ian McIntosh

and

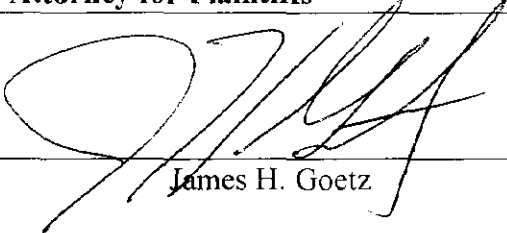
James E. Burns, Jr. and Richard Gallagher  
ORRICK, HERRINGTON & SUTCLIFFE LLP

**Attorneys for Defendants Oracle Corporation,  
OC Acquisition LLC, and Rhea Acquisition  
Corporation**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury that the foregoing document was served upon the following counsel by the means designated below on the 23<sup>rd</sup> day of December, 2011.

|   |  |
|---|--|
| <input checked="" type="checkbox"/> U. S. Mail<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Hand-delivery<br><input type="checkbox"/> Via Fax: (406) 586-9720<br><input type="checkbox"/> E-mail: <a href="mailto:jtarlow@lawmt.com">jtarlow@lawmt.com</a>                 | John H. Tarlow<br>Tarlow Stonecipher & Steele PLLC<br>1705 West College Street<br>Bozeman, MT 59715-4913<br><b>Attorney for Plaintiffs</b>             |
| <input checked="" type="checkbox"/> U. S. Mail<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Hand-delivery<br><input type="checkbox"/> Via Fax: (619) 231-7423<br><input type="checkbox"/> E-mail: <a href="mailto:DWissbroecker@rgrdlaw.com">DWissbroecker@rgrdlaw.com</a> | David T. Wissbroecker<br>Robbins, Geller, Rudman & Dowd, LLP<br>655 West Broadway, Suite 1900<br>San Diego, CA 92101<br><b>Attorney for Plaintiffs</b> |

  
\_\_\_\_\_  
James H. Goetz

cc: Hon. Wm. Nels Swandal, District Judge  
Montana Sixth Judicial District Court  
Park County  
P.O. Box 437  
Livingston, MT 59047  
Fax: (406) 222-4131

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[bgallik@goetzlawfirm.com](mailto:bgallik@goetzlawfirm.com)

GALLATIN COUNTY CLERK  
 OF DISTRICT COURT  
 JENNIFER BRANDON

2011 DEC 23 AM 11 41

FILED  
 BY     *JB*      
 DEPUTY

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**Attorneys for Defendants RightNow Technologies, Inc.,  
 Greg R. Gianforte, Richard E. Allen, Gregory M. Avis,  
 Thomas W. Kendra, William J. Lansing, and Allen E. Snyder**

**MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT,  
 GALLATIN COUNTY**

|  |   |  |
|--|---|--|
| TOWN OF DAVIE POLICE OFFICERS            | ) |  |
| RETIREMENT SYSTEM and DIANE              | ) |  |
| WOSEK, Individually and on Behalf of All | ) |  |
| Others Similarly Situated,               | ) |  |
|  | ) |  |
| Plaintiffs,                              | ) |  |
|  | ) |  |
| vs.                                      | ) |  |
|  | ) |  |
| RIGHTNOW TECHNOLOGIES, INC., GREG        | ) |  |
| R. GIANFORTE, RICHARD E. ALLEN,          | ) |  |
| GREGORY M. AVIS, THOMAS W.               | ) |  |
| KENDRA, WILLIAM J. LANSING, ALLEN        | ) |  |
| E. SNYDER, ORACLE CORPORATION, OC        | ) |  |
| ACQUISITION LLC, and RHEA                | ) |  |
| ACQUISITION CORPORATION,                 | ) |  |
|  | ) |  |
| Defendants.                              | ) |  |

Cause No. DV-11-1032C  
 Hon. Wm. Nels Swandal

**DECLARATION OF  
ALAN RASSABY**

STATE OF MONTANA                    )  
  :SS.  
COUNTY OF GALLATIN            )

ALAN RASSABY, to § 1-6-105, MCA, declares as follows:

1.       I am Senior Vice President and General Counsel of RightNow Technologies, Inc. ("RightNow"), which is headquartered in Bozeman, Montana, incorporated in Delaware, and a Defendant in this action.

On December 22, 2011, RightNow shareholders voted on whether to approve the proposed merger agreement pursuant to which Oracle Corporation would pay each RightNow shareholder \$43.00 cash. 87.2% of all shares entitled to vote were voted, and 87.0% of all shares entitled to vote approved the deal. Thus, 99.8% of all voted shares approved the merger; only 0.2% of voted shares opposed the merger.

I declare under penalty of perjury that the foregoing is true and correct.

Executed December 23, 2011, in Bozeman, Montana.

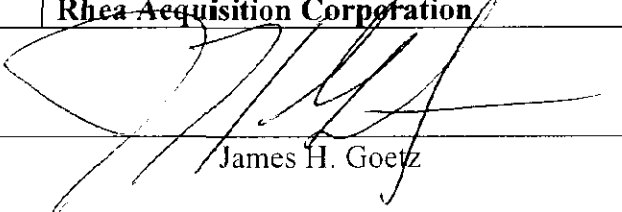
  
ALAN RASSABY



### CERTIFICATE OF SERVICE

I certify under penalty of perjury that the foregoing document was served upon the following counsel by the means designated below on the 23<sup>rd</sup> day of December, 2011.

|   |  |
|---|--|
| <input checked="" type="checkbox"/> U. S. Mail<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Hand-delivery<br><input type="checkbox"/> Via Fax: (406) 586-9720<br><input type="checkbox"/> E-mail: <a href="mailto:jtarrow@lawmt.com">jtarrow@lawmt.com</a>   | John H. Tarlow<br>Tarlow Stonecipher & Steele PLLC<br>1705 West College Street<br>Bozeman, MT 59715-4913<br><b>Attorney for Plaintiffs</b>   |
| <input checked="" type="checkbox"/> U. S. Mail<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Hand-delivery<br><input type="checkbox"/> Via Fax: (619) 231-7423<br><input type="checkbox"/> E-mail: <a href="mailto:DWissbroecker@rgrdlaw.com">DWissbroecker@rgrdlaw.com</a>   | David T. Wissbroecker<br>Robbins, Geller, Rudman & Dowd, LLP<br>655 West Broadway, Suite 1900<br>San Diego, CA 92101<br><b>Attorney for Plaintiffs</b>   |
| <input checked="" type="checkbox"/> U. S. Mail<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Hand-delivery<br><input type="checkbox"/> Via Fax: (406) 556-1433<br><input type="checkbox"/> E-mail: <a href="mailto:imcintosh@crowleyfleck.com">imcintosh@crowleyfleck.com</a>   | Ian McIntosh<br>Crowley Fleck PLLP<br>P. O. Box 10969<br>Bozeman, MT 59719-0969<br><b>Attorney for Defendants Oracle Corporation, OC Acquisition LLC, and Rhea Acquisition Corporation</b>   |
| <input checked="" type="checkbox"/> U. S. Mail<br><input type="checkbox"/> Federal Express<br><input type="checkbox"/> Hand-delivery<br><input type="checkbox"/> Via Fax: (415) 733-5759<br><input type="checkbox"/> E-mail: <a href="mailto:jburns@orrick.com">jburns@orrick.com</a><br><a href="mailto:rgallagher@orrick.com">rgallagher@orrick.com</a> | James E. Burns, Jr.<br>Richard Gallagher<br>Orrick, Herrington & Sutcliffe LLP<br>The Orrick Building<br>405 Howard Street<br>San Francisco, CA 94105-2669<br><b>Attorneys for Defendants Oracle Corporation, OC Acquisition LLC, and Rhea Acquisition Corporation</b> |

  
James H. Goetz

cc: Hon. Wm. Nels Swandal, District Judge  
Montana Sixth Judicial District Court  
Park County  
P.O. Box 437  
Livingston, MT 59047  
Fax: (406) 222-4131

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) December 22, 2011

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**RIGHTNOW TECHNOLOGIES, INC.**

(Exact Name of Registrant as Specified in Charter)

---

**DELAWARE**  
(State or Other Jurisdiction  
of Incorporation)

**000-31321**  
(Commission  
File Number)

**81-0503640**  
(IRS Employer  
Identification No.)

**136 ENTERPRISE BOULEVARD, BOZEMAN, MT**  
(Address of Principal Executive Offices)

**59718**  
(Zip Code)

Registrant's telephone number, including area code (406) 522-4200

**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
- 
-

# RIGHTNOW TECHNOLOGIES INC

## FORM 8-K (Current report filing)

Filed 12/22/11 for the Period Ending 12/22/11

|             |   |
|-------------|---|
| Address     | 136 ENTERPRISE BLVD.<br>BOZEMAN, MT 59718 |
| Telephone   | 406 522 1401                              |
| CIK         | 0001111247                                |
| Symbol      | RNOW                                      |
| SIC Code    | 7372 - Prepackaged Software               |
| Industry    | Software & Programming                    |
| Sector      | Technology                                |
| Fiscal Year | 12/31                                     |

## Item 5.07 Submission of Matters to a Vote of Security Holders

On December 22, 2011, RightNow Technologies, Inc. ("RightNow") held a special meeting of its stockholders. At that meeting, the following matters were voted upon, with the final results for each matter disclosed below:

1. A proposal to approve and adopt the Agreement and Plan of Merger, dated as of October 23, 2011 (the "Merger Agreement"), by and among RightNow, OC Acquisition LLC, a Delaware limited liability company and wholly-owned subsidiary of Oracle Corporation ("Oracle"), and Rhea Acquisition Corporation, a Delaware corporation and wholly-owned subsidiary of OC Acquisition LLC, as it may be amended from time to time, and approve the merger (the "Merger") of Rhea Acquisition Corporation with and into RightNow:

| For        | Against | Abstain | Broker Non-Votes |
|------------|---------|---------|------------------|
| 29,019,460 | 61,220  | 2,324   | 0                |

2. A proposal to approve, on a non-binding advisory basis, the compensation that may become payable to named executive officers of RightNow in connection with the completion of the Merger:

| For        | Against | Abstain | Broker Non-Votes |
|------------|---------|---------|------------------|
| 28,303,321 | 255,552 | 524,131 | 0                |

The proposal to approve the adjournment or postponement of the special meeting of stockholders, if necessary, to solicit additional proxies if there are insufficient votes to approve proposal 1, was not voted upon at the special meeting since there were sufficient votes to approve proposal 1.

Completion of the proposed Merger remains subject to regulatory approval and the satisfaction or waiver of the other closing conditions specified in the Merger Agreement.

## Item 8.01 Other Events.

On December 22, 2011, RightNow issued a press release announcing that it received stockholder approval for the previously announced Merger Agreement among RightNow, OC Acquisition LLC and Rhea Acquisition Corporation. A copy of this press release is attached as to this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference.

## Safe Harbor for Forward Looking Statements

This Current Report on Form 8-K contains forward-looking statements within the meaning of the Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These forward-looking statements involve certain risks and uncertainties that could cause actual results to differ materially from those indicated in such forward-looking statements, including, but not limited to, the ability of the parties to consummate the proposed Merger; satisfaction of closing conditions, including regulatory approval; the impact of the announcement or the closing of the Merger on RightNow's relationships with its employees, existing customers or potential future customers; the ability of Oracle to successfully integrate RightNow's operations and employees; the ability to realize anticipated synergies and costs savings of the proposed Merger; and such other risks detailed in RightNow's Quarterly Report on Form 10-Q filed with the SEC on November 4, 2011, which contains and identifies important factors that could cause actual results to differ materially from those contained in the forward-looking statements. Forward-looking statements contained in this Current Report on Form 8-K speak only as of the date hereof. RightNow assumes no obligation to update any forward-looking statement contained in this Current Report on Form 8-K.

## Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

99.1 Press Release dated December 22, 2011.

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## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

RIGHTNOW TECHNOLOGIES, INC.  
(Registrant)

Dated: December 22, 2011

/s/ Jeffrey C. Davison

Jeffrey C. Davison

Chief Financial Officer, Senior Vice President and Treasurer

---

## Exhibit Index

### Exhibit Number

### Document

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99.1

Press Release issued on December 22, 2011.



For Further Information, Contact:

Investor Relations:  
 Todd Friedman or Stacie Bosinoff  
 The Blueshirt Group  
 415.217.7722  
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[stacie@blueshirtgroup.com](mailto:stacie@blueshirtgroup.com)

Corporate Communications:  
 Jaia Zimmerman  
 RightNow Technologies  
 650.653.4441 Office  
 650.464.8462 Cell  
[jzimmerman@rightnow.com](mailto:jzimmerman@rightnow.com)

### **RightNow Stockholders Approve Merger with Oracle**

**BOZEMAN, Mont. – December 22, 2011** – RightNow Technologies, Inc. (NASDAQ: RNOW) ("RightNow") today announced that at the Company's Special Meeting of Stockholders held today, stockholders voted overwhelmingly to approve the proposed merger with an indirect wholly owned subsidiary of Oracle Corporation (NASDAQ: ORCL) ("Oracle").

Approximately 99.8% of the shares voting at today's Special Meeting of Stockholders voted in favor of the approval and adoption of the merger agreement, which represented approximately 87.0% percent of RightNow's total outstanding shares of common stock as of the November 8, 2011 record date for the Special Meeting.

Greg Gianforte, founder and CEO of RightNow, said, "We are pleased by the strong support we have received from our stockholders, with approximately 87.0% of the shares voting in support of the transaction. We look forward to working with Oracle to realize the significant value this combination will bring to our stockholders and all the new opportunities it will provide our dedicated employees, customers, and partners."

As previously announced on October 24, 2011, RightNow and Oracle entered into a definitive agreement for Oracle to acquire RightNow for \$43.00 per share in cash, or a total of approximately \$1.5 billion net of RightNow's cash and debt. Completion of the proposed merger remains subject to regulatory approval and the satisfaction or waiver of the other closing conditions specified in the merger agreement.

### **About RightNow Technologies**

RightNow is helping rid the world of bad experiences one consumer interaction at a time, eight million times a day. RightNow CX, the customer experience suite, helps organizations deliver exceptional customer experiences across the web, social networks and contact centers, all delivered via the cloud. With more than ten billion customer interactions delivered, RightNow is the customer experience fabric for nearly 2,000 organizations around the globe. To learn more about RightNow, go to [www.rightnow.com](http://www.rightnow.com).

RightNow is a registered trademark of RightNow Technologies, Inc. NASDAQ is a registered trademark of The NASDAQ Stock Market LLC.

### ***Safe Harbor for Forward Looking Statements***

This press release contains forward-looking statements within the meaning of the Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These forward-looking

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statements involve certain risks and uncertainties that could cause actual results to differ materially from those indicated in such forward-looking statements, including, but not limited to, the ability of the parties to consummate the proposed Merger; satisfaction of closing conditions, including regulatory approval, to the consummation of the proposed Merger; the impact of the announcement or the closing of the Merger on RightNow's relationships with its employees, existing customers or potential future customers; the ability of Oracle to successfully integrate RightNow's operations and employees; the ability to realize anticipated synergies and costs savings of the proposed Merger; and such other risks detailed in RightNow's Quarterly Report on Form 10-Q filed with the SEC on November 4, 2011, which contains and identifies important factors that could cause actual results to differ materially from those contained in the forward-looking statements. Forward-looking statements contained in this press release speak only as of the date hereof. RightNow assumes no obligation to update any forward-looking statement contained in this press release.



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Attorneys for Plaintiffs

2011 JUN 4 PM 4 17  
BRI  
DEPUTY

MONTANA EIGHTEEN JUDICIAL DISTRICT, GALLATIN COUNTY

TOWN OF DAVIE POLICE OFFICERS )  
RETIREMENT SYSTEM and DIANE )  
WOSEK, Individually and on Behalf of All )  
Others Similarly Situated, )

Plaintiffs, )

vs. )

RIGHTNOW TECHNOLOGIES, INC., GREG )  
R. GIANFORTE, RICHARD E. ALLEN, )  
GREGORY M. AVIS, THOMAS W. )  
KENDRA, WILLIAM J. LANSING, ALLEN )  
E. SNYDER, ORACLE CORPORATION, )  
OC ACQUISITION LLC and RHEA )  
ACQUISITION CORPORATION, )

Defendants. )

Cause No. *DV-11-1032C*

CLASS ACTION

COMPLAINT FOR BREACH OF  
FIDUCIARY DUTY

*no summons*

COMPLAINT

*Town of Davie Police Officers Retirement System and  
Diane Worek v. RightNow Technologies, Inc., et al.*

Plaintiffs, by their attorneys, allege as follows:

### **SUMMARY OF THE ACTION**

1. This is a stockholder class action brought by plaintiffs on behalf of the holders of RightNow Technologies, Inc. ("RightNow" or the "Company") common stock against RightNow and its Board of Directors ("Board") arising out of the Board's breaches of fiduciary duty in connection with its efforts to complete the sale of the Company to Oracle Corporation ("Oracle") following a grossly unfair sales process (the "Proposed Acquisition"). The Board was aided and abetted in its breaches of fiduciary duty by RightNow and Oracle. This action seeks equitable relief only.

2. RightNow is a software company that develops customer relationship management ("CRM") software for enterprise organizations. RightNow's main product helps companies manage customers' questions and complaints and is delivered over the Internet – or "cloud" – rather than by installing software directly on computers. RightNow is recognized as a leading provider of cloud-based customer service.

3. On October 24, 2011, the Company announced that it had entered into an Agreement and Plan of Merger ("Merger Agreement") with OC Acquisition LLC ("OC Acquisition"), a Delaware limited liability company and a wholly-owned subsidiary of Oracle, and Rhea Acquisition Corporation ("Rhea Acquisition"), a Delaware corporation and a wholly-owned subsidiary of OC Acquisition, pursuant to which Rhea Acquisition will merge with and into RightNow, with RightNow surviving as an indirect wholly-owned subsidiary of Oracle (the "Proposed Acquisition"). The Proposed Acquisition contemplates that each share of RightNow common stock issued and outstanding will be converted into the right to receive \$43.00 in cash.

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4. The Proposed Acquisition consideration undervalues RightNow's intrinsic value and stand-alone alternatives going forward. Over the last few years, RightNow has been exhibiting steady and predictable growth, with a top-line growth rate of roughly 20% across a broad number of industries. RightNow has also expanded into several adjacent segments, including marketing automation, call center management, online chat, and, most recently, social computing for customer service. Over the years, RightNow has developed a solid presence in online customer service, a critical component of customer relationship management, and can now boast the leading market position in this segment. Moreover, with an average order size of about \$750,000 per customer per contract, RightNow provides cloud-based services for a broad array of roughly 2,000 customers, including leaders across industries like Yahoo!, Overstock.com, Sprint, Orbitz, PayPal, and NASA.

5. Because of the Proposed Acquisition, however, RightNow's shareholders will not be allowed to share in any significant way in the Company's expected future success. Instead, any economic upside will enrich Oracle, which is currently attempting to move aggressively in the cloud-based solutions business. Adam Holt, an analyst with Morgan Stanley, predicted that corporations would increase their use of cloud-based services by at least 50% or more every year for the next three years. The shift has influenced many of the established technology players, like Oracle, to build or buy their own cloud offerings. Oracle sees RightNow as an anchor in its increasingly important cloud strategy.

6. The Proposed Acquisition is the product of a fundamentally flawed process that yielded an unfair price and was designed to ensure the acquisition of RightNow by Oracle on terms preferential to Oracle and Company insiders, but detrimental to plaintiffs and the other public stockholders of RightNow. In contrast to the inadequate consideration being offered to the Company's shareholders, certain Company insiders are obtaining lucrative benefits as a result of the

Proposed Acquisition. According to *Bloomberg*, for example, RightNow's Chief Executive Officer ("CEO") and founder Greg R. Gianforte's "20 percent stake in RightNow is worth about \$290 million in the deal."

7. The Merger Agreement contains certain deal-protection provisions that essentially preclude superior competing proposals for the Company and ensure that Oracle will not lose its preferred position. These provisions include: (i) a no-shop clause that prevents RightNow from providing confidential Company information to, or even communicating with, potential competing bidders except under extremely limited circumstances; (ii) information rights that require RightNow to notify Oracle of the identities of any potential bidder, the status and terms of any discussions regarding potential competing proposals, and of any intent to take action with respect to a superior proposal; (iii) matching rights that require RightNow and its financial and legal advisors to give Oracle five business days to match any superior proposal (with extensions under certain circumstances); and (iv) a termination fee provision that requires RightNow to pay Oracle \$59.7 million if RightNow accepts a superior proposal and, under certain other limited circumstances, a separate fee of \$18.3 million (creditable against the termination fee) and up to \$5 million in expenses.

8. Also in connection with the Merger Agreement, certain directors, executive officers and stockholders of RightNow, including Board members Greg R. Gianforte ("Gianforte"), Allen E. Snyder ("Snyder"), Thomas W. Kendra ("Kendra"), Richard E. Allen ("Allen") and William J. Lansing ("Lansing"), who collectively beneficially own 16.4% of the voting power of RightNow common stock, entered into Voting Agreements with Oracle (collectively, the "Voting Agreements") pursuant to which they agreed, among other things, to vote their shares of RightNow common stock in favor of the adoption of the Merger Agreement and against any alternative proposal and against

any action or agreement that would frustrate the purposes of, or prevent or delay the consummation of, the transactions contemplated by the Merger Agreement.

9. The deal protection provisions in the Merger Agreement and the Voting Agreements, separately and collectively, unduly bind the Board to the Proposed Acquisition and make it highly unlikely that the Board will fulfill its fiduciary duties in the future without this Court's intervention.

10. Each of the Individual Defendants (defined below) owe to RightNow's public shareholders fiduciary duties of loyalty, due care, candor, independence, good faith and fair dealing. Also, because the Proposed Acquisition, if completed, will mark the end for RightNow as a public company and will force its public shareholders to give up their ownership for cash, the RightNow Board has a fiduciary duty to maximize the value for the shareholders. By abusing their power as directors and officers, defendants are attempting to subvert the interests of plaintiffs and the other public shareholders of RightNow and/or have aided and abetted in the same. Plaintiffs therefore seek to enjoin the Proposed Acquisition.

11. This action seeks equitable relief only.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action because RightNow conducts business in Montana, as it has at all relevant times been located at 136 Enterprise Boulevard, Bozeman, Montana 59718. This action is not removable.

13. Venue is proper in this County because the conduct at issue took place and had an effect in this County, and RightNow is headquartered in this County.

### **PARTIES**

14. (a) Plaintiff Town of Davie Police Officers Retirement System is, and at all times relevant hereto was, a shareholder of RightNow.

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(b) Plaintiff Diane Wosek is, and at all times relevant hereto was, a shareholder of RightNow.

15. Defendant RightNow is a Delaware corporation. It was founded in 1997 by defendant Gianforte in Bozeman, Montana and today employs over 1,000 staff, and serves about 2,000 organizations worldwide. RightNow is recognized as a leading provider of cloud-based customer service.

16. Defendant Gianforte is the Company's founder, Chairman and CEO. Gianforte has served as RightNow's Chairman since 1995 and the Company's CEO since 1999. Gianforte also beneficially owns, indirectly, a membership interest in Genesis Partners, LLC, from whom RightNow leases its principal offices. Gianforte received over \$1.1 million in salary and other compensation in 2009. Gianforte agreed to enter into the Voting Agreements in connection with the Proposed Acquisition. According to *Bloomberg*, Gianforte's "20 percent stake in RightNow is worth about \$290 million in the deal."

17. Defendant Allen is a Board member of the Company. Allen has served as a director since May 2004. Allen previously worked as the chief financial officer of J.D. Edwards (now Oracle), from January 1990 to September 2003, and has held several senior management positions and titles at J.D. Edwards (now Oracle) since August 1985. Allen agreed to enter into the Voting Agreements in connection with the Proposed Acquisition.

18. Defendant Gregory M. Avis ("Avis") is a Board member of the Company. Avis has served as a director since December 2000.

19. Defendant Kendra is a Board member of the Company. Kendra has served as a director since March 30, 2007. Kendra agreed to enter into the Voting Agreements in connection with the Proposed Acquisition.

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20. Defendant Lansing is a Board member of the Company. Lansing has served as a director since April 2000. Lansing agreed to enter into the Voting Agreements in connection with the Proposed Acquisition.

21. Defendant Snyder is a Board member of the Company. Snyder has served as a director since 2008. Snyder previously worked as a senior vice president of support services at Oracle. Snyder agreed to enter into the Voting Agreements in connection with the Proposed Acquisition.

22. The defendants named above in ¶¶16-21 are sometimes collectively referred to herein as the “Individual Defendants.”

23. Defendant Oracle is a multinational computer technology corporation that specializes in developing and marketing hardware systems and enterprise software products like database management systems. Oracle employs about 108,000 people worldwide, and is a brand name that is synonymous with computer products around the world.

24. Defendant OC Acquisition is a Delaware limited liability company, and is being used to facilitate the Proposed Acquisition.

25. Defendant Rhea Acquisition is a Delaware corporation and a wholly-owned subsidiary of Oracle, and is being used to facilitate the Proposed Acquisition.

26. Defendants OC Acquisition, Rhea Acquisition and Oracle are collectively referred to herein as “Oracle.”

### **DEFENDANTS’ FIDUCIARY DUTIES**

27. Under Delaware law, in any situation where the directors of a publicly traded corporation undertake a transaction that will result in: (i) a change in corporate control, or (ii) a break up of the corporation’s assets, the directors and officers have an affirmative fiduciary

obligation to obtain the highest value reasonably available for the corporation's shareholders, and if such transaction will result in a change of corporate control, shareholder value must be maximized.

To diligently comply with these duties, the directors and officers may not take any action that:

- (a) adversely affects the value provided to the corporation's shareholders;
- (b) will discourage or inhibit higher offers to purchase control of the corporation or its assets;
- (c) contractually prohibits them from complying with their fiduciary duties;
- (d) will otherwise adversely affect their duty to search and secure the highest value reasonably available under the circumstances for the corporation's shareholders; and/or
- (e) will provide the directors with preferential treatment at the expense of, or separate from, the public shareholders.

28. In negotiating and agreeing to the Proposed Acquisition, the Individual Defendants, aided and abetted by RightNow and Oracle, breached their fiduciary duties as alleged herein.

29. In accordance with their duties of loyalty, care and good faith, the Individual Defendants, as directors and/or officers of RightNow, are obligated to refrain from:

- (a) participating in any transaction in which their loyalties are divided;
- (b) participating in any transaction in which they receive or are entitled to receive a personal financial benefit not equally shared by the public shareholders of the corporation; and/or
- (c) unjustly enriching themselves at the expense or to the detriment of the public shareholders.

30. Plaintiffs allege herein that the Individual Defendants, aided and abetted by RightNow and Oracle, violated the fiduciary duties owed to plaintiffs and the other public shareholders of RightNow in connection with the sale of the Company, including their duties of



loyalty, good faith and independence, insofar as they engaged in self-dealing and obtained for themselves personal benefits, including personal financial benefits, not shared equally by plaintiffs or the Class (defined below).

31. Because the Individual Defendants, aided and abetted by RightNow and Oracle, have breached their duties of loyalty, good faith, candor, care and independence in connection with the sale of RightNow, and have failed to take all reasonable steps to maximize shareholder value, the burden of proving the inherent or entire fairness of the Proposed Acquisition, including all aspects of its negotiation and structure, is placed upon defendants as a matter of law.

### **CLASS ACTION ALLEGATIONS**

32. Plaintiffs bring this action on their own behalf and as a class action on behalf of all holders of RightNow stock who are being and will be harmed by defendants' actions described below (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

33. This action is properly maintainable as a class action.

34. The Class is so numerous that joinder of all members is impracticable. According to RightNow's Securities and Exchange Commission ("SEC") filings, there were 33.2 million shares of RightNow common stock outstanding as of July 29, 2011.

35. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include, *inter alia*, the following:

(a) whether the Individual Defendants have breached their fiduciary duties of undivided loyalty, independence or due care with respect to plaintiffs and the other members of the Class in connection with the Proposed Acquisition;

(b) whether defendants are engaging in self-dealing in connection with the Proposed Acquisition;

(c) whether defendants are unjustly enriching themselves and other insiders or affiliates of RightNow;

(d) whether the Individual Defendants have breached any of their other fiduciary duties to plaintiffs and the other members of the Class in connection with the Proposed Acquisition, including the duties of good faith, diligence, honesty and fair dealing;

(e) whether the defendants, in bad faith and for improper motives, have impeded or erected barriers to discourage other offers for the Company or its assets;

(f) whether plaintiffs and the other members of the Class would suffer irreparable injury were the transactions complained of herein consummated; and

(g) whether the Individual Defendants have breached their duty to maximize shareholder value and have failed to gather a reasonable body of evidence regarding the value of the Company.

36. Plaintiffs' claims are typical of the claims of the other members of the Class and plaintiffs do not have any interests adverse to the Class.

37. Plaintiffs are adequate representatives of the Class, have retained competent counsel experienced in litigation of this nature and will fairly and adequately protect the interests of the Class.

38. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

39. Plaintiffs anticipate that there will be no difficulty in the management of this litigation. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

40. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

### **BACKGROUND TO THE PROPOSED ACQUISITION**

41. RightNow was founded in 1997. By 2002, the Company had moved out of Gianforte's spare bedroom and had 230 employees and \$30 million in annual sales. Two years later, the Company went public on the Nasdaq exchange, just a few months behind Salesforce.com, which currently is considered the largest player in the cloud-based CRM market.

42. After going public, RightNow did some acquisitions of its own to expand and improve its customer service platform, such as the purchase of HiveLive, a maker of enterprise-grade social networking software, for \$6 million in September 2009, and Q-go, a provider of natural language search technology, for \$34 million in January 2010.

43. By 2010, RightNow had grown to more than 1,000 employees and had built up a customer base of over 2,000 companies. It has posted steady revenue increases in the past five years, booking \$185.5 million in sales in 2010 and bringing \$28.4 million to the bottom line.

44. On April 27, 2011, RightNow announced its first quarter 2011 financial results, showing record growth. The Company reported its first quarter total revenue was a record \$52.3 million – a **24% increase** from last year. “We carried strong momentum from 2010 into the first quarter, executing against our strategy by expanding our presence with global organizations and growing our product footprint with the acquisition of Q-go,” said Gianforte in the press release.

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“We are well-positioned to continue our success, as customers recognize our unique ability to help them manage their customer experiences and demonstrate measurable returns on their investments.”

45. RightNow’s first quarter earnings garnered national attention. Gianforte interviewed with CNBC, who observed that RightNow beat financial analysts’ estimates that its earnings per share would be \$0.08 per share by reporting earnings per share of \$0.10. CNBC also noted that the Company had a \$1.4 million net income this quarter, which **increased by 138%** from the same time last year. Gianforte also interviewed with Fox, who called RightNow a “cloud computing powerhouse.”

46. On July 27, 2011, RightNow announced its second quarter 2011 financial results. The Company reported second quarter total revenue of \$54.8 million – a 26% increase from the prior year. “We executed well and delivered an outstanding second quarter with revenue and earnings ahead of guidance,” said Gianforte in the press release. “Our accelerating growth rate is allowing us to further expand our sales capacity and raise our expectations for recurring revenue growth in 2011. We continue to provide robust customer experience solutions with fast return on investment and innovative products that are easy to use, enabling us to deliver high value for our customers around the world. Market trends are creating a demand for RightNow CX and we believe we are well positioned to continue our momentum.”

47. On or around September 22, 2011, RightNow was named a leader by Gartner, Inc., an information technology research and advisory firm, for its for web customer service. This accolade was in addition to numerous accolades RightNow received in 2011, including: (i) named a leader for CRM Customer Service Contact Centers by Gartner, Inc.; (ii) won IQPC Call Center Excellence Award for best technology solution provider; and (iii) won multiple CRM Magazine Service Leader Awards in the web support, contact center search, and enterprise feedback management categories.

48. RightNow also continued to point to demonstrable results for its clients using RightNow solutions. For instance, RightNow stated that, among other things, its software saved Overstock.com \$1 million a month by streamlining customer queries, reduced by 25% the number of inbound customer emails at travel agent Orbitz, and helped motorcycle aftermarket parts retailer J&P Cycles drive \$100,000 in first-year sales from Facebook and other social media sites, while reducing customer support costs by \$50,000 a year.

49. Not only was RightNow doing well as a company, the industry in which it operated was also showing promising growth. According to technology consulting firm IDC, while the last recession hammered the CRM market along with the broader information technology sector, CRM spending rebounded, climbing 6.2% in 2010, to \$16.5 billion globally. According to IDC, the CRM market was on track for 7.6% growth in 2011, to almost \$18 billion. Between 2010 and 2015, IDC projected a 6.9% compounded annual growth rate for the overall CRM market, but that the customer service portion of the CRM market, where RightNow is focused, **will grow faster**, at 7.2%.

50. An August 24, 2011 article in *Investor's Business Daily* observed: "RightNow believes the addressable markets it covers total about \$5 billion today, but could **grow to \$15 billion in three to five years** as it expands offerings and companies modernize their interface with customers and clients."

51. RightNow's shareholders, unfortunately, will not be allowed to share in any significant way in the Company's expected future success.

52. On October 24, 2011, RightNow announced its third quarter 2011 financial results, reporting total revenue of \$57.7 million – a 19% increase. On the same day, the Company announced that it had entered into the Merger Agreement and approved the Proposed Acquisition. The press release, providing virtually no information to the Company shareholders, stated:

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## **Oracle to Acquire RightNow**

... RightNow®, the leading provider of cloud-based customer service, today announced that it has entered into an agreement to be acquired by Oracle Corporation, for \$43.00 per share or approximately \$1.5 billion net of RightNow's cash and debt. RightNow's Customer Service Cloud helps organizations deliver exceptional customer experiences across call centers, the web and social networks. Together, Oracle and RightNow can enable a superior customer experience at every contact and across every channel.

The Board of Directors of RightNow Technologies has unanimously approved the transaction. The transaction is expected to close by late 2011 or early 2012, subject to RightNow stockholder approval, certain regulatory approvals and customary closing conditions.

"Oracle is moving aggressively to offer customers a full range of Cloud Solutions including sales force automation, human resources, talent management, social networking, databases and Java as part of the Oracle Public Cloud," said Thomas Kurian, Executive Vice President, Oracle Development. "RightNow's leading customer service cloud is a very important addition to Oracle's Public Cloud."

"RightNow's products add leading customer experience capabilities that help empower companies to interact with and provide a consistent experience to customers across channels," said Greg Gianforte, CEO and founder, RightNow. "We look forward to combining our complementary capabilities along with maintaining and expanding our presence in Bozeman, Montana in order to better service our customers."

53. The Proposed Acquisition consideration undervalues RightNow's intrinsic value and stand-alone alternatives going forward. As discussed above, over the last few years, RightNow has been exhibiting steady and predictable growth, with a top-line growth rate of roughly 20% across a broad number of industries. RightNow has also expanded into several adjacent segments, including marketing automation, call center management, online chat, and, most recently, social computing for customer service. Over the years, RightNow has developed a solid presence in online customer service, a critical component of CRM, and can now boast the leading market position in this segment. Moreover, with an average order size of about \$750,000 per customer per contract, RightNow provides cloud-based services for a broad array of roughly 2,000 customers, including

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industry leaders like Yahoo!, Toshiba, Logitech, Overstock.com, 3M, Bausch & Lomb, Nutrisystem, TMobile, Sprint, Orbitz, Travelocity, Hertz, Allstate, Experian, PayPal, the U.S. Army, the U.S. Census Bureau, and the U.S. Postal Service.

54. Because of the Proposed Acquisition, however, RightNow's shareholders will not be allowed to share in any significant way in the Company's expected future success. Instead, any economic upside will enrich Oracle, which is currently attempting to move aggressively in the cloud-based solutions business. Adam Holt, an analyst with Morgan Stanley, predicted that corporations would increase their use of cloud-based services by at least 50% or more every year for the next three years. As competition intensifies, analysts say the sector could see more deal-making and that, already, prices are rising. Recently, Workday, another cloud-based software service, raised \$85 million, a deal that valued the company at nearly \$2 billion, according to a person close to that company.

55. Research from IDC shows that spending on cloud IT services was \$560 million in 2010, a figure that will be dwarfed as businesses ramp up their cloud plans and peak in 2015 when outlay on external expertise will reach \$8.2 billion. The majority of businesses will blend public and private with their in-house IT, and the complexity of integrating and managing these disparate sources is what will drive businesses to seek the help of third party cloud specialists according to IDC. Businesses believe they lack in-house skills to develop cloud services and will instead pay third party specialists to build and integrate hosted IT.

56. The shift has influenced many of the established technology players, like Oracle, to build or buy their own cloud offerings. "The cloud is becoming increasingly important to Oracle," observed a writer for *Dealbook*. Oracle sees RightNow as an anchor in its increasingly important cloud strategy.

57. “Oracle is moving aggressively to offer customers a full range of Cloud Solutions including sales force automation, human resources, talent management, social networking, databases, and Java as part of the Oracle Public Cloud,” said Thomas Kurian, executive vice president of development at Oracle. “RightNow’s leading customer service cloud is a *very important* addition to Oracle’s Public Cloud,” he continued. RightNow will permit Oracle to compete directly with Salesforce.com, the largest player in the cloud based CRM market.

58. The Proposed Acquisition is the product of a fundamentally flawed process that yielded an unfair price and was designed to ensure the acquisition of RightNow by Oracle on terms preferential to Oracle and Company insiders, but detrimental to plaintiffs and the other public stockholders of RightNow. In contrast to the inadequate consideration for the Company’s shareholders, certain Company insiders are obtaining lucrative benefits as a result of the Proposed Acquisition. According to *Bloomberg*, for example, RightNow’s CEO and founder Gianforte’s “20 percent stake in RightNow is worth about \$290 million in the deal.”

59. The Merger Agreement contains certain deal-protection provisions that essentially preclude superior competing proposals for the Company and ensure that Oracle will not lose its preferred position. These provisions include: (i) a no-shop clause that prevents RightNow from providing confidential Company information to, or even communicating with, potential competing bidders except under extremely limited circumstances; (ii) information rights that require RightNow to notify Oracle of the identities of any potential bidder, the status and terms of any discussions regarding potential competing proposals, and of any intent to take action with respect to a superior proposal; (iii) matching rights that require RightNow and its financial and legal advisors to give Oracle five business days to match any superior proposal (with extensions under certain circumstances); and (iv) a termination fee provision that requires RightNow to pay Oracle \$59.7



million if RightNow accepts a superior proposal and, under certain other limited circumstances, a separate fee of \$18.3 million (creditable against the termination fee) and up to \$5 million in expenses.

60. Also in connection with the Merger Agreement, certain directors, executive officers and stockholders of RightNow, including Board members Gianforte, Snyder, Kendra, Allen and Lansing, who collectively beneficially own 16.4% of the voting power of RightNow common stock, entered into Voting Agreements with Oracle pursuant to which they agreed, among other things, to vote their shares of RightNow common stock in favor of the adoption of the Merger Agreement and against any alternative proposal and against any action or agreement that would frustrate the purposes of, or prevent or delay the consummation of, the transactions contemplated by the Merger Agreement.

61. The deal protection provisions in the Merger Agreement and the Voting Agreements, separately and collectively, unduly bind the Board to the Proposed Acquisition and make it highly unlikely that the Board will fulfill its fiduciary duties in the future without this Court's intervention.

62. Because defendants dominate and control the business and corporate affairs of RightNow and are in possession of private corporate information concerning RightNow's assets, business and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of RightNow which makes it inherently unfair for them to pursue any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing stockholder value.

63. The Proposed Acquisition is the product of a hopelessly flawed process that is designed to ensure the sale of RightNow to Oracle on terms preferential to defendants and other RightNow insiders and to subvert the interests of plaintiffs and the other public stockholders of the

Company. By abusing their power as directors and officers, the defendants are attempting to strategically subvert the interests of plaintiffs and the other public shareholders of RightNow and/or have aided and abetted in the same.

64. Plaintiffs seek to enjoin the Proposed Acquisition. Plaintiffs request that the bond/undertaking requirement set forth in Mont. Code Ann. §27-19-306 (1)(a) be waived pursuant to subsection (b)(ii).

## **CAUSE OF ACTION**

### **Claim for Breach of Fiduciary Duties**

65. Plaintiffs repeat and reallege each allegation set forth herein.

66. The Individual Defendants, aided and abetted by RightNow and Oracle, have violated their fiduciary duties of care, loyalty, candor, good faith, and independence owed to the public shareholders of the Company and have acted to put their personal interests ahead of the interests of the Company.

67. By the acts, transactions and courses of conduct alleged herein, defendants, individually and acting as a part of a common plan, are attempting to unfairly deprive plaintiffs and other members of the Class of the true value of their investment in RightNow.

68. The Individual Defendants have violated their fiduciary duties by entering into the Proposed Acquisition without regard to the fairness of the transaction to RightNow shareholders. Oracle and RightNow aided and abetted the Individual Defendants' breaches of fiduciary duties owed to plaintiffs and the other shareholders of RightNow.

69. As demonstrated by the allegations above, the Individual Defendants failed to exercise the care required, and breached their duties of loyalty, good faith, candor and independence

owed to the shareholders of RightNow because, among other reasons, they failed to ensure a fair process and maximization of shareholder value and/or aided and abetted in the same.

70. Because the Individual Defendants dominate and control the business and corporate affairs of RightNow, and are in possession of private corporate information concerning RightNow's assets, business and future prospects, there exists an imbalance and disparity of knowledge and economic power between them and the public shareholders of RightNow which makes it inherently unfair for them to pursue any proposed transaction wherein they will reap disproportionate benefits to the exclusion of maximizing shareholder value.

71. By reason of the foregoing acts, practices and course of conduct, the defendants have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations toward plaintiffs and the other members of the Class.

72. As a result of the actions of defendants, plaintiffs and the other members of the Class have been and will be irreparably harmed.

73. Unless the Proposed Acquisition is enjoined by the Court, defendants will continue to breach their fiduciary duties owed to plaintiffs and the other members of the Class, will not engage in arm's-length negotiations on the Proposed Acquisition's terms, and will not supply to RightNow shareholders sufficient information to enable them to make informed decisions regarding the sale of their shares in connection with the Proposed Acquisition, and may consummate the Proposed Acquisition, all to the irreparable harm of the members of the Class.

74. Plaintiffs and the other members of the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiffs and the Class be fully protected from the immediate and irreparable injury which defendants' actions threaten to inflict.

## PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand preliminary and permanent injunctive relief in their favor and in favor of the Class and against defendants as follows:

- A. Declaring that this action is properly maintainable as a class action;
- B. Declaring and decreeing that the Merger Agreement was entered into in breach of the fiduciary duties of the defendants and is therefore unlawful and unenforceable;
- C. Enjoining defendants, their agents, counsel, employees and all persons acting in concert with them from consummating the Proposed Acquisition, unless and until the Company adopts and implements a procedure or process to obtain the highest possible price for shareholders;
- D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction which is in the best interests of RightNow's shareholders;
- E. Rescinding, to the extent already implemented, the Proposed Acquisition or any of the terms thereof;
- F. Awarding plaintiffs the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and
- G. Granting such other and further equitable relief as this Court may deem just and proper.

DATED: November 4<sup>th</sup>, 2011.

TARLOW STONECIPHER & STEELE, PLLC

John H. Tarlow  
1705 West College Street  
Bozeman, MT 59715

Attorney for Plaintiffs

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